



Committee report

Committee

LICENSING AND GENERAL PURPOSES COMMITTEE

Date

18 MAY 2012

Title

**DETERMINATION OF AN APPLICATION (WOWFest 12)
UNDER SECTION 5 OF ISLE OF WIGHT COUNTY
COUNCIL ACT 1971 (AS AMENDED)**

Report of

**STUART LOVE, STRATEGIC DIRECTOR OF ECONOMY
AND ENVIRONMENT**

EXECUTIVE SUMMARY

1. This paper recommends the notification under the Isle of Wight Act County Council Act 1971 (as amended) ("the Act") for a music festival called WOWFest 2012 is permitted and a notice issued with appropriate conditions.

BACKGROUND

2. The WOW Festival is a music festival event proposed to be held on land belonging to Millbank Farm along Shanklin Road, Shanklin Isle of Wight. The proposed venue will incorporate farm land on both sides of the road A3020.
3. Due to the nature and size of the proposed event, the organiser is required to obtain two separate consents to authorise the event to take place.
4. As the event proposals show that there will be sale of alcohol, provision of regulated entertainment and provision of late night refreshment, a Premises Licence is required under the Licensing Act 2003.
5. The organisers are proposing that the expected number of attendees will be over 5000 persons. Therefore the organisers are required to notify the Local Authority under the Isle of Wight County Council Act 1971 (as amended) ("the Act"). The legal context in the following paragraphs explains the requirements and the options available to the Council in more detail.
6. The processes under the Licensing Act 2003 and the Act require separate application/notifications and each have a predefined process/consultation stage. Each must be considered in isolation. Any representations received during the consultation period must be considered by the Council in relation to only that application/notification.

7. The proposed event must have a Premises Licence in place to authorise the activities. The event could still go ahead without permission under the Act; however the organisers could only hold an event for less than 5000 people.
8. A Premises Licence application for this event was received by the Council on 26 July 2011.
9. During the consultation process for the Premises Licence application over 130 objections were received, including one joint submission from the four local members whose wards adjoin the proposed site. There were no objections made by the responsible authorities as defined in the Licensing Act 2003 although a number of representations were made and resolved informally.
10. A Licensing (Determinations) Sub Committee held a meeting on 22 September 2011 to determine the application. After considering all representations and the evidence presented at the hearing a Premises Licence was issued for a period of three years.
11. A number of conditions were attached to the licence. These included the following conditions:
 - the number of attendees in the first year be restricted to 18,000, in the second year 20,000 and in the third year 22,000, and
 - the event organiser must submit a road traffic management plan to the local authority;
 - A draft Event Safety Plan must be circulated for consultation 120 days before the event;
 - The final Event Safety Plan must be submitted 56 days before the event.
12. Since the grant of the Premises Licence, local residents and elected members have continually expressed their concerns regarding this proposed event; correspondence has been regularly received by Council officers.
13. The event organisers submitted their notification under Section 5 of the Act on 13 April 2012 along with the relevant documentation as required.
14. All documentation was sent to consultees on 16 April 2012 requesting comments in relation to the proposal to be submitted by 28 April. The consultation section of this report details the responses received.

STRATEGIC CONTEXT

15. This report requires a quasi-judicial decision as the decision making process is subject to the requirements of the Act and therefore can not be directly linked to the strategic objectives of the authority.

CONSULTATION

16. Following receipt of the notification under the Act, the following agencies/organisations were consulted:
 - Police
 - Fire Service

- Environmental Health
- Highways Department
- Emergency Management
- Building Control
- Environment Agency
- Southern Water

17. Each of the above provided a response to the notification; all have been attached in a single document as Appendix 1.

18. Objections to the notifications were received from the Police and The Environment Agency. Summaries of all the responses received are below:

19. The Police have objected to the notification on the following reasons:

- No appointed Fencing Contractor currently engaged.
Boundary and inner site fencing is essential to ensure that there is no unauthorised access, to define safe routes and to prohibit access to restricted areas within the site.
- No crowd barrier supplier for in front of stage currently engaged.
Crowd barrier is positioned in front of the stage and is specifically designed to withhold the pressure of surging crowds. Again this is an essential part of the infrastructure ensuring the site is safe.
- No waste contractor currently engaged.
A waste collection contract is essential to ensure that appropriate hygiene standards are achieved.
- No plumbing services currently engaged.
A plumber is essential to ensure fresh water is distributed and available throughout the site.
- No potable water bowser provider.
Bowlers are essential as there is no mains water supply on site. Without this there will be no water available.

20. The Police also raised a number of other issues within their representation and concluded by saying “Based on the information supplied with this application I suggest that there is insufficient information to ensure that all of the licensing objectives can be fulfilled and therefore Option 3 (prohibiting the event) is worthy of strong consideration with the additional information you have from other agencies”.

21. The Environment Agency objected to the proposal on the ground that the site is on a Drinking Water Protection Zone and the documentation did not provide any details on how the organiser proposes to:

- Prevent liquid waste gaining entry into the water course; and
- Preserve the habitat of the wild life dependent directly on the water.

22. Fire & Rescue Service requested a number of conditions are imposed relating to:

- Notification of fire cover.
Essential for the Fire Service to assess the level of on site fire fighting to ensure an immediate response with sufficient means is made to an incident.
- Grass/field cutting.
In order to prevent fire and the spread of fire that all fields where there is grass or where crops have grown that these are cut prior to the event and all loose cuttings are removed.
- Facilities for Fire Fighters and Equipment.
It is essential, to enable a quick response to an incident, for facilities to be provided on site which can be used as a temporary fire station.
- Recovery of costs for the provision of fire cover and all other additional costs.

23. Environmental Health requested conditions are imposed related to:

- The management of the overall noise levels from the site.
To prevent actionable public nuisance.
- Risks assessments.
To ensure all significant hazards have been identified and measures put in place to mitigate the risk.
- Sanitation Plans.
To ensure provision of facilities comply with guidance and that an appropriate level of sanitation is maintained.
- Waste provision.
It is essential that suitable contractors are in place to maintain hygiene standards.
- Potable water supply.
Conditions relating to water supply are essential to ensure fresh water is distributed and available throughout the event.
- Food hygiene.
Conditions relating to food hygiene are essential to maintaining hygiene standards throughout the event.
- Recovery of additional departmental costs.

24. Highways have raised a number of concerns and propose conditions relating to:

- Maintaining public access along the Sunshine Trail with members of the public having primary right of way.
- The Sunshine Trail must not be obstructed by any equipment, vehicle or person related to the event.

- Maintaining the traffic management plan throughout the event.

25. Highways also propose a condition relating to the additional costs which would be incurred by the department.

26. An appraisal by the Council's Highways Department of the proposed traffic management plan has been attached as Appendix 2. Highways officers are still evaluating this and further comments may be made prior to, or verbally at the meeting.

27. Emergency Management requested a number of conditions be imposed relating to the event organiser contingencies in the event of an emergency or, in periods of prolonged adverse weather.

28. Building Control have requested a number of conditions are imposed regarding temporary and demountable structures which requires the event organiser to:

- Submit the' design criteria for all structures prior to the event;
- Demonstrate the design criteria has been independently evaluated by a competent person;
- Submit evidence that an inspection has been carried out by a competent person when structures have been erected;
- Monitor wind speeds during the event and to log any action taken when wind speeds reached or surpass the limits of each structure.

All the above conditions are essential to ensure that the structures are erected safely, checked after erection and are monitored during times of inclement weather.

29. Southern Water requested conditions are imposed requiring:

- A meeting with the organiser to agree the disposal of toilet waste. Essential to maintain disposal of waste throughout the event therefore ensuring the site will remain hygienic.
- The submission of information regarding the supply of potable water supplies. Essential to ensure that fresh water can be provided to the site.
- The recovery of additional costs incurred.

30. The four elected members whose wards are affected by the proposed site together with the Town Council were contacted and informed that the notification had been received.

31. Although under the Council's current procedure local members are unable to make comment in relation to notifications under the Act, a meeting was held with the local members to clarify a number of issues which were raised by them during the premises licence hearing. The committee stated these would be included within any

notice issue under the Act. Following this meeting a letter was received from Cllr Pugh which has been attached as Appendix 3.

32. The issues raised in this letter request that:
 - All the agencies'/organisations' costs are paid in full by 11 June 2012;
 - The number of people attending the site is conditioned to reflect the emergency services provision;
 - A copy of the Event Safety Plan and a revised site plan is made available to the public by 30 June 2012.
33. During the consultation an email (Appendix 5) was received from Ken Rankin, the production manager for WOW Festival explaining the dates of the event as provided in the notification were wrong. The dates in the notification were for Friday 17 August to Sunday 19 August 2012. The email confirmed that the proposed event dates should have been Thursday 16 August to Monday 20 August 2012. All the dates and timings in the documentation accompanying the notification reflected the correct dates.
34. Within the same email Mr Rankin addressed some of the areas which had not been covered in the Event Safety Plan. He also explained that a number of equipment/service suppliers had not been secured but he was confident these would be very soon.
35. This email was passed to all the consultees who were asked if the content of the email changed any of their representations. They were also asked if they required additional time to consider its contents. No agencies responded to confirm that their submission needed to be changed or that they required additional time.
36. Officers met with the event organisers on 8 May 2012 to discuss the representations made during the consultation period as attached at Appendix 2. At this meeting the event organisers confirmed their intention to respond to the issues raised, this was confirmed in an email from the organisers (attached at Appendix 4).

FINANCIAL / BUDGET IMPLICATIONS

37. Council expenditure on licensing matters (specifically those matters administered and enforced through Regulatory Services) is completely balanced from income generated from fees.
38. The Act makes provision for all authorities to reclaim all additional costs incurred by the assembly (the event) taking place by way of conditions. Each relevant authority has requested additional costs for this event.
39. The Isle of Wight NHS Trust has indicated in their submission the costs which would be incurred by them if a suitable medical provider is not engaged.
40. The Environment Agency has requested that the event organiser is, by way of condition, held responsible for payment of any testing which they need to undertake to identify if the event has contributed to the deterioration of the water quality in the

area. The cost of this sampling is currently unknown and therefore a cost can not be provided prior to the meeting.

41. Southern Water has requested that the event organiser is by way of condition held responsible for payment of the charges for waste disposal and the costs which they will incur ensuring the Waste Water Treatment Plant is open for the organiser to deposit sewage created by the event. The quantities of waste and the costs for maintaining access to the Treatment Plant is unknown as this is dependent on the number of people attending the event.
42. The Act provides the ability for the Council to request a financial bond with sufficient surety for unknown costs.

CARBON EMISSIONS

43. There are no Carbon emissions implications for the Isle of Wight Council in this report.

LEGAL IMPLICATIONS

44. Section 5 of the Act provides that a person shall not hold an assembly of over 5000 people unless he has given to the Council, notice that the assembly is to be held. Such notice shall not be given less than 4 months before the holding of the assembly.
45. When notice is given the Council must within 1 month of such notification either:
 - Permit the assembly based on the notification provided without the imposition of further conditions.
 - Permit the assembly applying further conditions.
 - Prohibit the assembly on one or all of the grounds provided by the Act.
46. In relation to this notification any notice to be served by the Council should have been served by 11 May 2012.
47. A formal undertaking has been agreed between Regulatory Services and the organisers of this event to extend the service of this notice until 25 May 2012.
48. The Act further provides that to permit the assembly based on the notification provided without the imposition of further conditions, no action needs to be taken by the Council.
49. In the event that the Council, after consultation with "such local authorities and such statutory or other authorities as the council thinks fit" is not satisfied that the notification proposal are sufficient the council can serve a notice imposing conditions. Conditions can only be imposed in relation to:
 - The supply of water
 - Securing sanitary conditions
 - Public order
 - Public safety
 - Prevention of actionable nuisance

50. The Council cannot impose any condition relating to public order without the consent of the Chief Constable of the police authority.
51. If conditions are imposed and the person holding the assembly fails to comply with them, the council can notify that person that they propose to exercise the power to execute such works or take such action as may be reasonably necessary to comply with that condition and thereafter to recover the expenses reasonably incurred in doing so.
52. Failure to comply with a condition is a criminal offence for which the person holding the assembly could be prosecuted.
53. On receipt of the notification and consideration of representations made by those with whom the council has consulted, the council can, in accordance with the Act, prevent the assembly from taking place.
54. If in the reasonable opinion of the council the event should not take place, Section 5(5) and 5(5A) of the Act provide the grounds on which an assembly can be prevented:
 - That the intended site is too small;
 - That by reason of the situation of the intended site it is not suitable for the purpose of the proposed assembly or for the number expected to attend;
 - That by reason of the condition of the intended site it is not suitable for the purpose of the proposed assembly or for the number expected to attend;
 - If the requirements imposed on the fire or police authorities by the assembly are likely to exceed the available resources of those authorities.
55. A notice preventing the assembly must, in the case of unsuitability, provide the grounds on which it is, in the opinion of the council, unsuitable.
56. If notice is served preventing the assembly from taking place, the assembly in question shall not be held unless that notice is withdrawn by the council.
57. Failure to comply with a notice preventing an assembly is a criminal offence for which the person holding the assembly could be prosecuted.
58. Any person aggrieved by the service of a notice either imposing conditions or preventing the assembly has a right of appeal against that notice to the Crown Court. An appeal must be made within 14 days of the service of the notice.
59. The committee should be mindful that this event has been granted a premises licence under the Licensing Act 2003. If a notice was issued prohibiting the event under the Act, the organiser is still permitted to hold the event for no more than 4,999 people including all staff, artists and attendees under the terms and conditions of the premises licence.

PROPERTY IMPLICATIONS

60. The Isle of Wight Council owns the Sunshine Trail which runs directly through the event site; however there are no material matters to consider when determining this report.

OPTIONS

61. Option 1: To permit the assembly (the event) without the issuing of a notice.

62. Option 2 To permit the assembly (the event) and issue a Notice containing conditions (suggested conditions are set out in Appendix 6). And subject to the provision of a financial bond for the possible additional costs of the Isle of Wight NHS Trust and the (as yet) unquantified costs of Southern Water and the Environment Agency.

The amount to be requested by way of a bond is delegated to the Director of Economy & Environment and/or the Head of Planning & Regulatory Services to be set in consultation with these three authorities.

63. Option 3: To prohibit the assembly (the event) by issuing a Notice clearly identifying the grounds on which the notice is issued.

RISK MANAGEMENT

64. **With regard to Option 1:** It is officers' opinion that given the proposed numbers of people expected to attend the event and, after taking into account the representations received, that this event could not go ahead in a safe way without specific conditions being imposed on the organiser. In addition, without the issuing of a Notice each authority would not be able to recover their costs.

In the event the committee determine this to be the correct option, any person aggrieved by this decision could lodge an appeal to the Crown Court.

If the appeal was upheld by the Crown Court the council could be liable for the costs incurred by the person submitting the appeal. There is also a risk of reputational damage to the council if the Court's ruling was to differ from the Committee's.

65. **With regard to Option 2:** If the committee was to permit this event with conditions proposed following the representations from the responsible authorities, any person aggrieved by this decision could lodge an appeal to the Crown Court. The event could go ahead and would be subject to the conditions imposed pending the outcome of the appeal.

If the appeal was upheld by the Crown Court, the council could be liable for the costs incurred by the person submitting the appeal. There is also a risk of reputational damage to the council if the Court's ruling was to differ from the Committee's

66. **With regard to Option 3:** If the event was to be prohibited, an appeal could be made to the Crown Court by anyone aggrieved by this decision. The event would be

prohibited pending the outcome of the appeal which could result in the event being cancelled for this year.

If the appeal was upheld by the Crown Court, the council could be liable for the costs incurred by the person submitting the appeal. In addition to the costs of the appeal the council could be liable in whole or in part for costs incurred in cancelling the event. This could also include sums paid or payable to contractors. The event organisers would be unlikely to recover sums representing pure economic loss or profit. There is also a risk of reputational damage to the Council if the Court's ruling was to differ from the Committee's.

EVALUATION

67. As previously outlined in the Legal Implications section of this report, the only reasons for prohibiting the event are:

- That the intended site is too small;
- That by reason of the situation of the intended site it is not suitable for the purpose of the proposed assembly or for the number expected to attend;
- That by reason of the condition of the intended site it is not suitable for the purpose of the proposed assembly or for the number expected to attend;
- If the requirements imposed on the fire or police authorities by the assembly are likely to exceed the available resources or those authorities.

68. Turning specifically to Section 5(5) and (5A) of the Act, each of the grounds upon which, following consultation, the council could serve a notice prohibiting the event are considered below.

69. That the site is too small.

The site covers an extensive area of farmland located primarily to the south side of the A3020. None of the relevant consultees have objected to the proposal in respect of the size of the site and the proposed numbers (rising from 18,000 to 22,000 over three years). Officers are satisfied that the size of the site is adequate for the size of gathering proposed

70. That the situation of the site is not suitable for the purpose of the proposed assembly or for the numbers expected to attend.

Officers have carefully considered the location of the proposed event as an aspect of considering its "situation". Principle features of the site's location are:

(a) The site is located within a rural area of the Island relatively remote from the ferry entrance points to the Island for festival visitors from off Island. The two largest musical festivals held annually under the Act are located closer to the entrance points; the Isle of Wight Festival site is well connected to entrance points at Cowes, East Cowes and Ryde by public transport routes. Whilst slightly out of the town in its location, the Bestival site is still within 5 kilometres of Newport.

(b) The proposed WOW Festival site is located further from the Island's entrance points; however, it does adjoin the A3020, one of the principal routes from Newport to Shanklin.

(c) It is likely that given the rural location and the lower number of public transport connections between Newport and Shanklin and lack of direct routes to the site from Fishbourne or Ryde, that visitors from off Island may be more likely to travel by car and make use of on-site car parking/camping facilities. It should be noted, however, that no information has been provided by the promoters to estimate the potential split between those travelling by car as opposed to public transport.

71. The Committee will need to be satisfied that these concerns can be resolved, should the numbers of visitors using private car be relatively high.

72. Officers do not believe the rural location in its own right will be a reason to prohibit the event.

73. The event proposes that the car parking areas would be on the north side of the A3020, attendees to the festival would cross this road via a footbridge before accessing the site itself over the Sunshine Trail. Camping facilities are proposed to the southern side of the main festival arena.

74. Whilst in principle these proposals are acceptable, as a concept they are drawn together by virtue of a Traffic Management Plan. A key element of the Traffic Management Plan is the need to provide a safe access across the A3020. This is proposed to be via a temporary footbridge. It should be noted that only a schematic drawing of this has not been submitted to date. The Police Authority's comments on the notification, has raised a number of issues in respect of the relationship of the Traffic Management Plan, fencing requirements and number control. The Police Authority and the Council's Highways Department consider that without adequate details of the bridge the Traffic Management Plan proposals at the current time are not safe.

75. Within the Police representation they state that they advised the organisers 18 months' ago of the need to secure a fencing contractor due to the potential pressure for fencing during the Olympic year. Given the rural location adequate fencing is required to ensure:

- The integrity of the Traffic Management Plan;
- Access into and out of the event is controlled;
- Licensable areas are managed;
- Dealing with local objections to protect properties/livestock in the locality

76. In their representation the Police have concluded that due to insufficient information it can not be ensured that all of the licensing objectives can be met. They suggest that the option of prohibiting the event be given strong consideration. To clarify the position only the reasons given in paragraph 67 above can be considered to prohibit the event. The four licensing objectives can only be used in respect of applications made under the Licensing Act 2003.

77. The Environment Agency has raised concerns in respect of the “situation” of the site which is on land where there are springs which serve Scotchells Brook. The Brook serves a downstream fishery. In addition, the site is located over a Drinking Water Protection Zone. Currently the Environment Agency objects to the proposal on the grounds of its location.
78. Officers recognise that given the proposed numbers of attendees that the level of risk of pollution to the Brook and underlying drinking water is difficult to predict. At the current time, further clarification is being sought from the Environment Agency concerning the points they have raised. The Environment Agency has advised that relocation to a less sensitive area would be preferable and that they have not been approached by the organisers.

79. **That the condition of the intended site is not suitable.**

None of the consultees have raised concerns that the physical condition is unsuitable for the proposed event. The Fire Authority has suggested conditions which would be essential to reduce the risk of fires should the Committee be minded to approve the event with conditions.

80. **That the requirements imposed on the Fire or Police authorities are likely to exceed the available resources to those authorities.**

Should the Committee choose to permit the event subject to conditions requiring receipt of payments to cover the costs of the two authorities in advance of the event taking place (as proposed by suggested conditions); officers do not consider this matter should be considered to prohibit the event.

CONCLUSION AND OPTIONS

Allow the event to take place with no conditions.

81. See paragraph 64, officers do not recommend that this is an acceptable option.

Allow the event with conditions.

82. The event could take place with the imposition of conditions. However, the Police and Environment Agency have objected to the event.
83. In the context of the Police representation the written response raises their concerns based on the principals of the Licensing Act rather than the Act. The points they have raised as set out in paragraph 19 and 20 relate to the wider definition of “situation”. This includes the location itself and the external influences on the situation, such as the possible lack of fencing due to the Olympics.
84. Officers advise that the concerns of the police could be met by issuing a Notice with conditions.
85. The Environment Agency’s comments relate directly to the suitability of the situation of the proposed site. The Committee are asked to note that officers consider their objection is relevant under the Isle of Wight Council Act 1971 (as amended); however

in the absence of further detail, which has been requested, we are unable to advise that their concerns could not be overcome by relevant conditions.

Prohibit the event from taking place.

86. At this current time there are concerns about the safety and environmental impact of this event for the following reasons:
 - a) The lack of details of the proposed footbridge crossing the A3020 which is fundamental to the Traffic Management Plan;
 - b) The lack of provision for fencing and the explicit concerns raised by the Police Authority in this regard which is particularly relevant given the location of the site;
 - c) Important issues raised by the Environment Agency given the presence of streams which feed Scotchells Brook.
87. These issues are relevant in the determination of the situation of the site. To move to a prohibition of the event the committee must be satisfied that the proposed site is unsuitable and the unsuitability can not be addressed by appropriate conditions.
88. The structure of the Act does not expressly refer to a power to defer the decision. In the event that the committee are minded to allow extra time for consideration of late information and further consultation with relevant consultees, the committee can do so.
89. Although the decision can be deferred the current time limits apply and a Notice must be issued by 25 May 2012, unless a new date can be formally agreed between the Council and the event organiser.

RECOMMENDATION

90. Option 2 To permit the assembly (the event) and issue a Notice containing conditions (suggested conditions are set out in Appendix 6). And subject to the provision of a financial bond for the possible additional costs of the Isle of Wight NHS and the (as yet) unquantified costs of Southern Water and the Environment Agency.

The amount to be requested by way of a bond is delegated to the Director of Economy & Environment and/or the Head of Planning & Regulatory Services to be set in consultation with these three authorities.

APPENDICES ATTACHED

- [Appendix 1](#) Agencies Submissions during Consultation
- [Appendix 2](#) Traffic Management Plan up date.
- [Appendix 3](#) Cllr Pugh's submission
- [Appendix 4](#) Email from WOW Festival following meeting on 8 May 2012

Appendix 5 Email dated 27 April 2012 received from Ken Rankin - WOW Festival

Appendix 6 Draft Notice

BACKGROUND PAPERS

- WOW Festival Premises Licence
- Minutes of Licensing Committee 22 September 2011
[http://www.iwight.com/council/committees/Licensing%20\(Determinations\)%20Sub%20Committee/22-9-11/minutes.pdf](http://www.iwight.com/council/committees/Licensing%20(Determinations)%20Sub%20Committee/22-9-11/minutes.pdf)
- Isle of Wight Act Policy – Guidance for large Events
http://www.iwight.com/living_here/environment/environmental_health/images/IsleofWightActGuidance.pdf

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